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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No :. 468 of 2002

APPELLANTS Om Prakash Sahihs and another

Versus

RESPONDENT State of C.G. Through

JUDGMENT FOR CONSIDERATION

Sd/-
Dhirendra Mishra
Judge

HON'BLE SHRI JUSTICE L.C. BHADOO

I agree

Sd/-
L.C. Bhadoo
Judge

POST FOR JUDGMENT ON 11-05-2007

Sd/-
DHIRENDRA MISHRA
Judge

(29)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal Nos. 468 of 2002

APPELLANTS

1. **Om Prakash Sahihs**
   S/o. Bhikham Sahihs
   Aged about 20 years
   Occupation-labour

2. **Labha Sahu**
   S/o. Darbari Sahu, Aged 48 years, Occupation-Labour
   Both r/o. village Kamroad, P.S. Mahasamund, Distt. Mahasamund

Versus

RESPONDENT

State of C.G. Through Police Station Mahasamund

DB: Hon'ble Shri L.C.Bhadoo & Hon'ble Shri Dhirendra Mishra, JJ.

Smt. Uma Tiwari, Advocate for the appellants.
Shri Akhil Mishra, P.L. for the State.

JUDGMENT

(Delivered on 11-5-2007)

Per Dhirendra Mishra, J

The appellants have preferred this appeal under Section 374(2) of Cr.P.C. against the judgment dated 2nd March 2001 passed by 1st Additional Sessions Judge, Mahasamund in S.T. No. 308/2000 whereby learned Additional Sessions Judge after holding the appellants guilty for abducting deceased Munshi Lal in order to murder him and thereafter murdered him and in order to screening themselves from legal punishment caused disappearance of the dead body of Munshi Lal, convicted accused Om Prakash under Section 364 of IPC and sentenced to undergo imprisonment for life, to pay fine of Rs. 200/-, in default of payment of fine to further undergo two months additional RI. Accused appellants Om Prakash & Labha Sahu both have been convicted for offence under Section 302 read with Section 34 and 201 of IPC and sentenced to undergo imprisonment for life, to pay a fine of Rs. 200/-, in default of payment of fine to further undergo two months additional RI and seven

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years RI, to pay a fine of Rs. 200/- in default of payment of fine to further undergo two months additional RI respectively. All the sentences have been directed to run concurrently.

2. Case of the prosecution, in brief, is that appellant Om Prakash abducted Munshi Ram, ten years old son of complainant Nirbhay Sahu with a purpose of offering human sacrifice for unearthing hidden treasure and thereafter murdered him in association with appellant Labha Sahu and hid the dead body in the bushes. According to prosecution complainant Nirbhay Sahu lodged missing report No. 19/2000 in police station Mahasamund on 3.05.2000 at about 2.30 a.m. mentioning therein that accused Om Prakash of his village had taken his son on his bicycle thereafter his son is missing. The Station House Officer after registering the missing report proceeded to the village and recovered the dead body of the deceased on the basis of disclosure statement of Ex. P-2 of appellant Om Prakash vide dead body recovery memo of Ex.P-3. Inquest over the dead body of the deceased Ex.P-9 was prepared in presence of witnesses and thereafter dead body was sent for autopsy to Govt. Hospital, Mahasamund vide Ex. P-18 where Dr. Ghanshyam Lal Chandrakar P.W.-8 conducted post mortem and submitted his report vide Ex. P-15. Buds of Bidi lying near the place of incident was seized from accused Labha Sahu vide Ex. P-4. Fresh Bidis were also seized from Labha Sahu on his production vide Ex.P-5. Blood stained *Beshram Bush* was taken into possession vide Ex.P-6. One bicycle was seized from Gendu Ram Sahu vide Ex. P-7. A piece of stone was taken into possession vide Ex.P-8. Bicycle hire register of Ex.P-10(C) was also seized, blood stained baniyan was taken into possession from appellant Labha Sahu vide Ex.P-12. Blood stained baniyan was taken into possession from Om Prakash vide Ex. P-13. Spot map of Ex. P-14 was prepared by S.H.O. Dehati Nalishi of Ex. P-15 was given by Investigating Officer regarding death of Munshi Ram after recovery of dead body, on the basis of which merg intimation was registered in the police station. Thereafter FIR of Ex. P-16 was recorded in the police station. Seized articles were sent for chemical examination to FSL, Raipur vide Ex.P-21 and report of FSL is Ex. P-25. After completing the investigation charge sheet was filed in the Court of Chief Judicial Magistrate Mahasamund who in turn committed the case to the Sessions Judge, Mahasamund from

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where the learned Additional Sessions Judge received the same on transfer for trial.

3. Charge under Sections 364, 302 read with Section 34 and 201 of the IPC was framed against appellant Om Prakash whereas charge under Section 364 read with Section 34, 302 and 201 of the IPC was framed against appellant Labha Sahu. The accused persons abjured their guilt.

4. Prosecution in order to establish the charges against the appellants examined 11 witnesses in all. Thereafter statements of accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them in prosecution evidence and submitted that they are innocent and they have been falsely implicated in the crime in question. Learned Additional Sessions Judge after hearing the counsel for the respective parties convicted and sentenced the accused persons as mentioned above.

5. Homicidal death of deceased Munshi Lal is not in dispute. Even otherwise from perusal of statement of Dr. Ghanshyam Lal Chandrakar P.W.-8 who has conducted the post mortem and has given his report Ex. P-15 in which he has mentioned that the tongue was between the teeth, sound of broken bone is heard from temporal region on being hit, abrasion in size of 12 cm. x 3cm. on left elbow, abrasion in size of 11cm x 1.5 cm. extending towards inside of the left elbow, abrasion in size of 1.5 cm. x 1 cm. on back side of the left hand, two abrasions on left hand in size of 2.5 cm. x 2 cm. and 1 cm. x 1cm., all the injuries have been observed as ante mortem caused by hard and blunt object, on internal examination, he found that bone was depressed in fronto parietal region, membrane of brain was congested and brain material was coming out of the place of injury, the doctor opined that cause of death was fracture of skull bone and cardiac arrest due to respiratory failure, homicidal death of deceased is established.

6. Learned counsel for the appellants submits that the case is based on circumstantial evidence and the circumstances are of last seen together and recovery of dead body of the deceased at the instance of the appellants, however, the prosecution has failed to establish the above circumstance by leading cogent evidence and the dead body has been

recovered from open place. There is no evidence against appellant Labha Sahu and even then, he has been held guilty on the basis of memorandum of co-accused Om Prakash.

7. On the other hand, learned counsel for the State supports the judgment of the trial Court.

8. There is no eye witness to the incident and the case of the prosecution is based on circumstantial evidence that appellant Om Prakash was seen taking the deceased in a bicycle out of the village on the date of incident in morning. He returned alone and on enquiry he said that he did not know anything about Munshi Lal as he had left him near Banyan Tree. On memo of appellants, body of Munshi Lal was recovered from the bushes on being pointed out by both the appellants. Blood stained baniyan was seized from the possession of the appellants and as per the report of the FSL, it contained blood.

9. So far as the above circumstances are concerned, P.W-2 Punni Bai who is mother of the deceased, has stated that her son was sitting in front of the house after taking tea, Om Prakash came from the side of his home and stopped near her son and took him towards outer direction of the village on his bicycle. At that time, her son was putting up half shirt and half pant and slippers. When he did not return after an hour she searched him in the vicinity with other villagers. Her husband also returned home and asked whether Babu (Munshi) has taken his meals whereupon she told him that he has gone with Om Prakash after taking tea and till now he has not returned. Both of them searched their son and in the process they met Om Prakash. On enquiry Om Prakash said that he had left Munshi Lal near Banyan tree. He has not beaten him. Thereafter they went with Sarpanch and Kotwar to lodge missing report and on the following day, the police came to the village then she learnt that Munshi Lal has been thrown in Barradabri field after murder. In cross-examination this witness has admitted that there was no animosity between Om Prakash and her before the incident and she is not aware as to which place Om Prakash has taken her son and left him.

10. P.W.-3 Nirbhay Ram Sahu has corroborated the evidence of P.W. 2 Punni Bail witness in material particulars and has further stated that in the

process of searching his son, he had gone to the house of Om Prakash and asked him about his son as he had taken him from his home, however he replied that he has left his son near the banyan tree and he does not know about him and stated that "do you think that we have murdered him?" His parents also retorted in anger. Thereafter he searched in the vicinity and in the village as also in the relations in nearby villages but whereabouts of his son could not be traced. The Sarpanch of village had gathered the villagers and he was searched by forming teams of villagers. When returned from village Pacheda, he saw that number of villagers had gathered near his house and they were asking Om Prakash about his son. However Om Prakash only said that he had taken Munshi Lal on his bicycle and left him near the banyan tree and ultimately missing report was lodged and thereafter police came in the village, they enquired from villagers whereupon Om Prakash stated that he along with Labha Sahu had murdered Munshi Lal and led the police to the bushes where dead body was lying.

11. P.W.-4 Bhuwan Sahu, Sarpanch is witness of memorandum EX.P-2 and he has stated that dead body was found on the information of appellant Om Prakash. He has proved the document Ex.P-2, Ex.P-3 & Ex. P.4. He is also the witness of seizure memo of Ex.P-6 and recovery memo of Ex. Ex.P-9. He has also stated that Punni Bai had informed him that Om Prakash took her son on a bicycle, they searched for Om Prakash by forming teams till 7 O'clock in the night and Om Prakash had admitted that he took the deceased on bicycle but said that he left the deceased near banyan tree.

12. P.W.-5 Gendu Ram Sahu has stated that Om Prakash had taken a bicycle on hire on 2.05.2000 at about 7 O'clock in the morning and had returned the same at 9.00 a.m. P.W.-6 is also a witness of Ex.P-4, Ex.P-5 & Ex.P-6. However, he has been declared hostile. In cross examination he has admitted that Om Prakash had informed the police that he along with Labha Sahu would lead to the dead body of Munshi Lal thereafter both of them went to the place where the dead body was hidden. The Investigating Officer Sant Ram Nirmalkar P.W.-10 has proved the investigation including recording of memo and recovery memo of dead body. From cross-examination of these witnesses the defence has not

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been able to elicit anything which makes their evidence doubtful or untrustworthy.

13. Thus, from the evidence available on record the prosecution has been able to establish that the appellant Om Prakash took the deceased Munshi Lal on his bicycle in the morning towards outer direction of the village and thereafter he returned alone. On being queried by the parents of the deceased he admitted that he took Munshilal however he gave false explanation that he left him near the banyan tree. Search was made by the parents of the deceased as also the villagers but the deceased could not be traced and in these circumstances report was lodged by P.W.-3 Nirbhay Ram Sahu, father of the deceased mentioning therein that appellant Om Prakash had taken Munshi Lal on his bicycle and since then he is missing which is recorded in the Rojnamcha Sanha and thereafter on the basis of memorandum of appellant Om Prakash dead body of Munshi Lal was found near bushes. Thus, in our considered opinion, the prosecution has established by clinching circumstantial evidence that appellant Om Prakash abducted 10 years' old Munshi Lal with intention to murder him and took him out of the village and caused his death and disposed of the dead body near bushes. In these circumstances, offence as against appellant Om Prakash is established beyond reasonable doubt and we have no hesitation in holding the appellant Om Prakash guilty for offence under Sections 364, 302 and 201 of I.P.C.

14. However, so far appellant Labha Sahu is concerned, the trial Court has convicted him for offence under Sections 302 with aid of Section 34 and 201 of I.P.C. and has acquitted him of charges under Section 364 with the aid of Section 34 of I.P.C. His conviction under 302 read with Section 34 and also under Section 201 of I.P.C. cannot be sustained because there is no admissible evidence against this accused except statement under Section 27 of the India Evidence Act of the co-accused Om Prakash, buts of bidis lying on the place of incident and fresh bidis taken into possession from him were of the same variety and the baniyan seized from him was stained with blood and as per F.S.L. report, presence of blood has been confirmed. So far as recovery of dead body is concerned, the recovery was made on the basis of memorandum statement of appellant Om Prakash and since Om Prakash had already

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given information regarding the place where the dead body was disposed of, the mention of name of this appellant is of no consequence. Origin of blood group of blood present in Baniyan of Labha Sahu is not confirmed whether it was human blood, that too, of the same group of the deceased Munshi Lal. The fact that buts of bidis found near the place of incident and the fresh bidis seized from appellant Labha Sahu were of same variety is also of no consequence. In these circumstances, the prosecution has not been able to establish involvement of appellant Labha Sahu in the crime in question. In the result, conviction of appellant Labha Sahu under Section 302 with the aid of Section 34 and 201 of I.P.C. cannot be sustained. Accordingly, appellant Labha Sahu is entitled to be acquitted of all the charges by extending benefit of doubt.

15. In the result, appeal preferred by appellant Om Prakash is dismissed. He is convicted under Sections 364, 302 and 201 of I.P.C. and sentenced as imposed by the trial Court. The appeal preferred by appellant Labha Sahu is allowed. He is acquitted of all the charges. He be set at liberty forthwith if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge